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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,542	01/18/2002	Roberto Reniero	112843-032	7122
29157	7590	07/26/2004	EXAMINER WARE, DEBORAH K	
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			ART UNIT	PAPER NUMBER

1651

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/936,542

Applicant(s)

RENIERO ET AL.

Examiner

Deborah K. Ware

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112, first and second paragraphs. See Attachment A.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see Attachment A.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-2 and 4-22.Claim(s) withdrawn from consideration: N/A.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

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Attachment A

Claims 1-2 and 4-22 are presented in the after final of June 7, 2004.

The rejections under 35 USC 112, first and second paragraphs are removed.

Further, it is acknowledged that Applicants will file terminal disclaimers to overcome the obvious double patenting rejections of record, however, the rejections are maintained until the terminal disclaimers have been received.

The response to the 35 USC 102/103 rejection is also noted. While Applicants do acknowledge the Lactobacilli strains of the prior art to be viable and resistant to freeze drying, they fail to note that strains may be selected for which are also resistant to phagi (i.e. bacteriophage or viruses), note page 4, lines 54-55. Thus, while the prior art strains are useful against pathogens including bacteria and viruses, they are useful for colonizing the gut or gastrointestinal tract, note pages 2, lines 39-40 and 6, lines 10-15. Furthermore, the cited prior art clearly recognizes a protection property against infection of intestinal track and hence cells thereof by viruses may include rotaviruses. This is an inherent property of the selected lactobacilli strains of the cited prior art.

Also the cited prior art teaches that the selected Lactobacilli strains have a higher stability compared with others, note bridging pages 4-5, lines 55-60 and lines 1-5, respectively. In addition, the cited prior art teaches that thanks to these properties, the strains of the selected Lactobacilli are alive upon administering to the gastrointestinal tract and remedy diarrhea, note page 5, lines 4-10. Once the Lactobacilli strains colonize as disclosed by the cited prior art they will inherently interact with cellular rotavirus receptors and secrete metabolites, such as lactic acid. Further, the argument

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that the prior art teaches a mixture of strains is noted, however, the prior art merely establishes that more than one strain may be employed in the preparations as does Applicants claimed invention. Therefore, the differences for which Applicants have presented are not believed by the examiner to be pertinent since there appear to be no differences. Thus, the rejections are maintained for reasons of record with the exception of the ones noted above as being removed.


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Deborah K. Ware  
July 10, 2004

  
DAVID M. NAFF  
PRIMARY EXAMINER  
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